

October 25, 2013

California Energy Commission
Dockets Office, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512



Re: Docket No. 13-CCEJA-1; Comments on California Energy Commission's Proposition 39: California Clean Energy Jobs Act - 2013 Program Implementation Draft Guidelines.

I. INTRODUCTION

The Solar Energy Industries Association (SEIA)¹ submits comments herein in response to the California Energy Commission's (CEC) request for comment on the Proposition 39 Program Implementation Draft Guidelines (Draft Guidelines). The Draft Guidelines define how the State of California intends to implement the California Clean Energy Jobs Act (Proposition 39) Program. The purpose of the Draft Guidelines is to provide direction to potential applicants on the types of awards and required proposals or plans, explain screening and evaluation criteria, describe the standards to be used to evaluate project proposals, and outline the award process. SEIA supports the Draft Guidelines, in main, but offers a few recommendations to ensure that the program funds are used in a cost effective manner and in a way that does not erect unnecessary barriers to use of the funding for solar installations.

II. LOCAL EDUCATIONAL AGENCY PROPOSITION 39 AWARD PROGRAM

A. Energy Planning Funds

In the first year of the program, Eligible Local Educational Agencies (LEA) have the option of requesting a portion of their fiscal year 2013-2014 award for energy planning without submitting an expenditure plan to the Energy Commission. The energy planning funds, however,

¹ The comments contained in these comments represent the position of the Solar Energy Industries Association as an organization, but not necessarily the views of any particular member with respect to any issue.

can only be spent on two activities (1) screening and energy audits, and (2) Proposition 39 program assistance. LEAs which are awarded such funds are restricted to spending 85% of the award for screening and energy audits and 15% for program assistance. The basis for split in the use of funds is not clear and appears to be completely arbitrary. The Draft Guidelines clearly define what activities may qualify for energy planning funds. Therefore, as long as the monies received for energy planning are confined to the defined activities, there is no basis for limiting how much of the monies can be allocated to one category. SEIA recommends that the 85% / 15% split between screening and energy and program assistance be removed.

Moreover, SEIA recommends that an additional item be added to the Proposition 39 program assistance category of expenditures upon which energy planning funds can be spent. Currently, the Proposition 39 program assistance activities for which energy planning funds can be used are limited to the completion of any of the defined Proposition 39 program steps. These steps, which are summarized in Exhibit C to the Guidelines, exclude certain activities which are categorized as “LEA Independent Responsibilities.” Included in this subcategory is Department of State Architecture (DSA) compliance. DSA provides design and construction oversight for, among other things, K–12 schools and community colleges. In conjunction with this oversight, the DSA assesses a fee which, with respect to solar installations, has proven to be significant.² Such fees could be an impediment to the installation of solar projects and we urge the CEC to work with DSA to reduce such fees. Accordingly, SEIA recommends that the Guidelines be modified to allow energy planning funds under the Proposition 39 program to be used for the payment of DSA fees.

² For example, a 250 kW project that has a \$4/W sales price results in a permit fee of \$10,000 if it was submitted before 6/1/2013. The amount increases to almost \$11,000 if submitted after that date. This amount is over four times greater than the applicable building permit fee, pursuant to state law (SB 1222), required to be charged by local governments throughout California.

B. Sequencing

In accord with Public Resources Code section 26235(a)(3)(C), the Draft Guidelines set forth recommendations for the sequencing of facility improvements. The first item in the recommended sequencing order is “maximize energy efficiency (for example, installing daylighting or insulation).” While SEIA recognizes the intent behind the recommendation, not all energy efficiency measures will be feasible or cost-effective. An energy audit conducted as part of the LEA’s energy planning activities³ should identify feasible and cost-effective projects. Accordingly, SEIA recommends the first item in the sequencing order be clarified to read:

First, maximize feasible or cost-effective energy efficiency (for example, installing day-lighting or energy management systems) as recommend by an energy audit.

In addition, in order to assist LEAs in following the recommended sequencing approach, the Draft Guidelines (Appendix B) provide “a list of typical cost-effective K–12 school energy efficiency and alternative energy generation projects.” The listing is organized by energy project categories, and within each category, the projects are ranked using a score of 1–5, “with 1 being the typically most cost-effective and 5 being the least attractive for most schools.” SEIA notes that the Draft Guidelines have ranked the installation of distributed generation as a “5.” While the Draft Guidelines state that the “priority rankings are based upon potential energy savings, cost, and practicality,” the exact manner in which those items were determined and factored into the ranking is unclear. Moreover, given that renewable distributed generation is in the second group of resources in California’s loading order for energy investment and procurement, to refer

³ The audits shall also provide a list of all energy efficiency projects recommended for implementation and shall include detailed project cost, energy savings calculations and financial analysis of proposed energy efficiency measures. The financial analysis shall provide a comprehensive understanding of the financial benefits of implementing the specific energy efficiency project recommendations.

to the installation of distributed generation by a LEA as a “least attractive” option does not comport with California’s energy policy. SEIA instead recommends that the sequencing approach reflect the state’s loading order.

C. Leveraging Other Funding

Proposition 39 and implementing legislation SB 73 specifically envision enabling LEAs to use funding under this program to leverage other available sources of funding for clean energy projects.⁴ One of the most significant sources of such funding for solar energy projects is the federal investment tax credit, which provides 30% of the cost of a solar energy system. A LEA, as a tax free entity, is not typically eligible for the federal investment tax credit (ITC). However, LEAs are able to obtain the benefits of the ITC through third-party owned power purchase agreement (PPA) financing models for solar generation systems. Throughout California, numerous schools and school districts have increased their energy savings through solar PPAs.⁵ Proposition 39 provides the unprecedented opportunity for more LEAs to enjoy such savings while creating good-paying jobs and spurring economic development in the very communities in which LEAs are located.

Under the PPA model, the LEA would not be required to purchase the equipment, pay for the installation, or maintain and monitor the installation for the term of the PPA (typically 20-30 years). Rather, the LEA would purchase, on a kWh basis, the solar power generated by the installation for less than the price of electricity offered by a utility. Generally, after a set period of time, the system can be purchased by the LEA if it desires. This model has the benefit of

⁴ See Public Resources Code Section 26235(g): This section shall not affect the eligibility of any eligible entity awarded a grant pursuant to this section to receive other incentives available from federal, state, and local government, or from public utilities or other sources, or to leverage the grant from this section with any other incentive

eliminating the upfront costs of going solar and future costs of system maintenance and monitoring or equipment replacement, since the system owner is obligated to perform these tasks. Moreover, unlike a cash purchase, PPAs enable third parties to pass through to the LEA all of the federal tax benefits, providing the LEA energy savings from day one. By leveraging Proposition 39 funds to finance a PPA upfront, a LEA will be able to further reduce their rate for electricity below what the third party entity would have been able to offer absent those funds. In addition, if a LEA intends to purchase the installation after the period of time set by the third party owner, the savings from the tax credit will be reflected in the purchase price of the installation.

The PPA model will allow the Proposition 39 Program funds to leverage private capital and the federal investment tax credit and enable Proposition 39 funds to be utilized in a more cost-effective manner. SEIA respectfully requests that the Draft Guidelines explicitly render PPAs an eligible expenditure of Proposition 39 funding. Doing so will provide LEAs a suite of options for deploying solar energy systems, and allow LEAs the ability to choose which model best fits their needs.

III. ENERGY CONSERVATION ASSISTANCE ACT -- EDUCATION SUBACCOUNT: LOAN AND TECHNICAL ASSISTANCE PROGRAM

In conjunction with the general Proposition 39 award, SB 73, the enabling statute, transferred \$28 million from the Job Creation Fund to the Energy Conservation Assistance Act, Education Subaccount (ECAA-Ed). Of that amount, approximately 90 percent will be used to provide low-interest or no-interest loans to LEAs and community college districts through the ECAA Loan Program. To qualify for an ECAA-Ed loan, the Draft Guidelines provide that six requirements must be satisfied, one of which is that “the term of the loan may not exceed the useful life of the loan-funded equipment or the lease term of the building in which the loan-

funded equipment will be installed.”⁶ This requirement appears to specifically restrict the use of Proposition 39 loan funds to the direct purchase of equipment by the eligible entity and precludes other financing models such as PPAs. SEIA does not interpret Proposition 39 or SB 73 as prohibiting the use of ECAA-Ed loans funded by Proposition 39 funds to finance a PPA. As such, SEIA requests that the Energy Commission modify the Draft Guidelines to eliminate the above restriction and explicitly permit LEAs to allocate ECAA-Ed loan funds toward PPAs. As discussed above, the PPA model will lower the overall cost of the solar installation, allowing taxpayer dollars to be utilized in a more cost-effective manner.

IV. CONCLUSION

SEIA appreciates the opportunity to present these comments, and looks forward to working with the CEC to finalize the program guidelines for the implementation of the California Clean Energy Jobs Act.

Respectfully submitted,

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⁶ SEIA also notes that the “effective useful life” for photovoltaics set forth in Appendix F to the Draft Guidelines is too low. SEIA recommends the effective useful life of photovoltaics be increased to 25 years given that the majority of systems are warrantied for this length of time.